IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.900 OF 2003
IN
SUMMARY SUIT NO.1946 OF 2003

Tata Motors Limited & Anr. ..Plaintiffs.

Vs.

Malabar Automobiles Pvt. Ltd. ..Defendants.

Mr.G.R.Joshi with Mr.Vipul Bilve, Mr.Avinash Joshi i/b. M/s.Mulla & Mulla for the Plaintiffs.

Mr.Virag Tulzapurkar i/b.M/s.Doijode Phatarphekar for the Defendants.

CORAM: S.J.VAZIFDAR, J.
DATED: 7TH JUNE, 2005

P.C. :

The suit is filed to recover an amount of over Rs.5,00,00,000/-.

2. Plaintiff No.1 is the drawer of the various suit bills of exchange. Plaintiff No.2 is the payee in respect thereof. The Defendant is the acceptor of the bills of exchange.

3. The bills of exchange were issued in connection with transactions entered into between Plaintiff No.1 and the Defendant. Plaintiff No.1 sold and delivered vehicles and spare parts to the Defendant.

There is no dispute that the Defendant received all the goods. There is no dispute as to the quality of the goods. There is no dispute that the bills of exchange were accepted by the Defendant. There is no dispute that the bills of exchange were dishonoured by the Defendant. There is no dispute that no payment in respect of any of the suit transactions have been made.

4. Mr.Tulzapurkar, the learned counsel appearing on behalf of the Defendant however raised only certain technical defences under the Negotiable Instruments Act. He submitted that neither of the Plaintiffs had any cause of action against the Defendant.

5. All the bills of exchange are identical. He submitted that Plaintiff No.1 did not have any cause of action on the bills of exchange as none of the bills of exchange had admittedly been endorsed in its favour. He also submitted that section 37 of the Negotiable Instruments Act does not give rise to any cause of action in favour of Plaintiff No.1 to maintain the present suit on the said bills of exchange. Lastly, he submitted that Plaintiff No.1 was not entitled to maintain the suit on the original cause of action viz. the invoices as it

stood extinguished upon the execution of the bills of exchange. Considering the view that I have taken and, considering that there is no objection among the Plaintiffs inter-se, I find it unnecessary to decide these issues. I have also not for this reason found it necessary to deal with the other submission advanced by Mr.Joshi on behalf of the Plaintiffs.

6. As against Plaintiff No.2, Mr.Tulzapurkar submitted that it had no cause of action as the bills of exchange were drawn without recourse to the drawer i.e. Plaintiff No.1. He submitted that admittedly, Plaintiff No.2 having received the amounts from Plaintiff No.1, has no cause of action. In other words, it is submitted on behalf of the Defendant that it is not liable to pay either of the Plaintiffs for the said goods which were admittedly received and not paid over.

7. It is difficult to accept this contention. It is pertinent to note that the Defendant’s case is that in view of the condition in the bills of exchange that they are drawn without recourse to the drawer, the payment made by Plaintiff No.1 to Plaintiff No.2 was illegal and Plaintiff No.1 was

not entitled to enforce any rights thereon. I will assume that this contention is correct. In that event, the payment made by Plaintiff No.1 to Plaintiff No.2 is an internal arrangement between the two of them. It would be open for Plaintiff No.1 to recover the amount from Plaintiff No.2. Plaintiff No.2 is therefore, certainly entitled to maintain the suit on the Bills of Exchange. In such circumstances, it would be grossly unjust to permit the Defendant to take advantage of any internal arrangement between the Plaintiffs inter-se.

8. Mr.Tulzapurkar also submitted that 13 of the 73 Bills of Exchange mentioned at Serial Nos.57 to 69 at Exhibit "D" of the aggregate value of Rs.50,84,967.47 ps., had been signed by the officers of the Defendant who were not authorised to do so. He relied upon a resolution annexed to the affidavit in reply, which authorised four persons to sign the said bills of exchange.

9. Firstly, the Plaintiffs denied that the resolution was brought to their notice. It must be mentioned at this stage in fairness to Mr.Joshi that I rejected the Plaintiff’s application for time to file an affidavit in rejoinder but permitted

Mr.Joshi, for the Plaintiff to proceed on the basis of denials. It is further pertinent to note that at no stage was the question of authority ever raised. Thus, in any event, the Defendant impliedly if not expressly, held its officers out to be authorised to sign the bills of exchange.

10. Certain contentions had also been raised regarding the bills of exchange at Serial Nos.27 and 73 in Exhibit "D" to the plaint. As I intend granting unconditional leave to defend in respect of these two bills of exchange, it is not necessary to deal with the contentions in this regard.

11. In the circumstances, the following order is passed :

i) Leave to defend granted to the Defendant conditional upon the Defendant depositing in this Court a sum of Rs.5,50,00,000/- within 16 weeks from today.

ii) In the event the Defendant deposits the aforesaid amount, the suit to stand transferred to the list of Commercial Causes. The Defendants to file their

written statement within 30 days. Discovery and inspection within four weeks thereafter.

iii) In the event the Defendant fails to deposit the aforesaid amount, liberty to the Plaintiffs to apply for further orders.

iv) On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of 3 years and thereafter for like periods of three years each till further orders.

vi) It is clarified that the consequence of failure to comply with this order of deposit shall not apply to the Bills of Exchange at Serial Nos.27 and 73 of Exhibit "D" in respect whereof unconditional leave to defend has been granted.

vii) Summons for Judgment stands disposed of accordingly.

All parties to act on an authenticated copy of this order.